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8 UNITED STATES DISTRICT COURT  
 9 SOUTHERN DISTRICT OF CALIFORNIA  
 10

11 JIM MAXWELL and KAY MAXWELL,	)	Case No. 07 CV 2385 JAH WMc
individually and as guardians of TREVER	)	
12 ALLEN BRUCE and KELTEN TANNER	)	[Assigned to Judge Hon. John A. Houston]
BRUCE; and JIM MAXWELL, as executor	)	
13 of the ESTATE OF KRISTEN MARIE	)	<b>DEFENDANT ALPINE FIRE PROTECTION</b>
MAXWELL-BRUCE,	)	<b>DISTRICT'S REPLY TO OPPOSITION TO</b>
14	)	<b>MOTION TO DISMISS</b>
Plaintiffs,	)	
15	)	
vs.	)	
16	)	Date: February 19, 2008
COUNTY OF SAN DIEGO; ALPINE	)	Time: 2:30 p.m.
17 FIRE PROTECTION DISTRICT; VIEJAS	)	Ctrm: 11
FIRE DEPARTMENT; DEPUTY	)	
18 LOWELL BRYAN "SAM" BRUCE;	)	
DOES 1-50,	)	
19	)	
Defendants.	)	Complaint Filed: December 19, 2007
20	)	

21 **1. Whether an Adequate "Nexus" of Facts Exists Depends, at Least in**  
 22 **Part, on the Outcome of the Other Motions to Dismiss, But Simple Remedies Exist to**  
 23 **Prevent Any Confusion if Supplemental Jurisdiction Over the Claims Against Alpine**  
 24 **is Not Retained.**

25 Defendant Alpine Fire Protection District ("Alpine") moved to dismiss and/or sever  
 26 and dismiss the claims against it in this action, for lack of federal question jurisdiction  
 27 under 28 U.S.C. § 12(b)(6). The primary opposition argument is that, at least as to this  
 28 defendant, the "nexus" of facts is intertwined with the allegations against the County

1 Sheriffs. During the “magic hour” alleged, between the time the decedent was shot and the  
2 time she was pronounced dead, plaintiffs claim that all paramedics and all Sheriffs’  
3 personnel were engaged in concerted action that defies all efforts to separate. This  
4 argument is made even though the claims and law applicable to the Sheriffs are clearly  
5 different from the claims and law relevant to the paramedics. It is also claimed that it  
6 would be difficult to have separate trials of the actions against the Sheriffs and the  
7 paramedics, and that there would be a risk of inconsistent results.

8 Each of these concerns will be discussed in order.

9 First, however, it is important to note that, since the Alpine Fire Protection District  
10 (“Alpine”) filed its motion to dismiss, the related co-defendant, the Viejas Fire Dept., filed  
11 its own motion to dismiss. In it, Viejas asserts sovereign immunity. That assertion  
12 changes things.

13 Assuming that the claim of sovereign immunity is applied by this court as  
14 requested, the absence of Viejas from this litigation simplifies and reduces the claims at  
15 the trial against Alpine. With one less defendant, a separate trial against Alpine in the state  
16 court (or even this court) would be shorter and more simple. The availability of a shorter  
17 and more straightforward trial in the state court mitigates even further against this court  
18 retaining supplemental jurisdiction, for the supposed purpose of simplifying the overall  
19 litigation.

20 The pending motion to dismiss by the County, on behalf of its Sheriffs’  
21 Department, is a variable that is beyond Alpine’s control. If all or most of that motion is  
22 granted, and the federal claims are dismissed (or an amendment of them is required), then  
23 there is even less reason for this court to maintain supplemental jurisdiction over the  
24 claims against Alpine. Moreover, the absence of Viejas, ostensibly a foreign sovereign,  
25 removes yet further federal issues to be resolved, or federal laws to be applied, that  
26 necessitates this court’s attention.

27 Finally, the plaintiff’s assertion that a separate trial state court trial would present  
28 an impenetrable puzzle of different outcomes and different findings is simply wrong. Trial

1 attorneys in both federal and state courts routinely apply findings and judgments from  
2 related cases, using commonly known techniques and laws.

3 For example, presumably, one trial will begin before the other (it does not matter  
4 which). At both trials, appropriate instructions will be given to the juries to only award the  
5 damages caused by the individual defendants. In fact, California's "Proposition 51," at  
6 *Civil Code* § 1431.2, demands that this be done. "Proposition 51 thus retains the joint  
7 liability of all tortfeasors, regardless of their respective shares of fault, with respect to all  
8 objectively provable expenses and monetary losses." *DaFonte v. Up-Right* (1992) 2  
9 Cal.4<sup>th</sup> 593, 600.

10 Findings of fact at a first trial can be included in instructions of the second trial,  
11 eliminating the need to retry basic background issues. And, depending on how the jury  
12 verdict forms are constructed, the judgment in one trial will be offset against the judgment  
13 (if any) in the second trial, eliminating the risk of duplicate judgments. The remedies for  
14 the seemingly insurmountable problems claimed by the plaintiff are straightforward.  
15 There is no true impediment to a fair trial of California claims in the California courts, at  
16 least as against Alpine.

## 17 **2. Conclusion.**

18 Alpine Fire Protection District respectfully requests that the claims against it be  
19 dismissed, for failure to raise any federal question jurisdiction or supplemental jurisdiction,  
20 under 28 U.S.C. § 12(b)(6). There is no true need for this court to volunteer retaining  
21 supplemental jurisdiction over the purely state-based claims raised against it.

22  
23 Dated: February 12, 2008

HAIGHT BROWN & BONESTEEL LLP

24  
25 By: / S / Stephen Caine

26 Kevin Osterberg  
27 Stephen M. Caine  
28 Attorneys for Defendant  
Alpine Fire Protection District

**PROOF OF SERVICE BY EMAIL**

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) ss.:

*JIM MAXWELL and KAY MAXWELL vs. COUNTY OF SAN DIEGO; ALPINE FIRE PROTECTION DISTRICT; VIEJAS FIRE DEPARTMENT; DEPUTY LOWELL BRYAN "SAM" BRUCE; DOES 1-50*  
*07 CV 2385 JAH WMc*

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 6080 Center Drive, Suite 800, Los Angeles, CA 90045-1574.

On February 12, 2008, I served on interested parties in said action the within: **DEFENDANT ALPINE FIRE PROTECTION DISTRICT'S REPLY TO OPPOSITION TO MOTION TO DISMISS.** I caused the foregoing document to be served by email transmission to each interested party as follows:.

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Executed on February 12, 2008, at Los Angeles, California.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Stephen M. Caine  
(Type or print name)

/s/ Stephen M. Caine  
(Signature)